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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Husk Co.

Honorable Joe C. Gladney
Criminal District Attorney
Henderson, Texas

Dear Sir:

Opinion No. 0-2358

Re: Authority of County Board of
School Trustees to remove a
trustee from office or to
declare said office vacant.

We received your letters dated May 13th and June 21,
1940 setting out certain facts and requesting our opinion on
a question based upon said facts.

Your letter dated May 13, 1940 reads, in part, as
follows:

"On the first Saturday in April, 1936, at
a regular trustee election, Hubert Osborne was re-
elected as trustee of the Pine Hill Common School
District of Husk County, Texas. Thereafter, he
took oath of office and duly qualified as trustee
of said district. He was again re-elected as
trustee of said district on the first Saturday
of April, 1939, at the regular trustee election.
He failed to take the oath of office after this
election but has served as trustee of said district
during this period of time, signing teacher's con-
tracts, vouchers, etc.

"On April 5, 1940, the County Board of School
Trustees of Husk County, Texas, being under the im-
pression that there was a vacancy in said office,
entered the following in the minutes of said board,
at a call meeting thereof:

"A motion was made by J. R. Welch and
seconded by Walter Arnold to appoint J. B.
Harris, trustee of Pine Hill Common School
District No. 46, to fill the place of
Hubert Osborne, who did not qualify as trus-
tee. This was voted unanimously."

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"On or about the 5th day of April, 1940, J. B. Harris took the oath of office, but thereafter, on or about the 20th day of April, 1940, he resigned as trustee for the reason that he has not resided in the district for six months prior thereto and was disqualified. On the same date that Harris resigned, Osborne took the oath of office and filed the same with the County Superintendent. During this entire period of time, Osborne has continued to act as trustee.

"During the year 1922, Osborne was convicted of Felony theft in the Federal Court. He is not a qualified voter and has not been during this entire period of time."

Your letter dated June 21, 1940 submitting additional facts reads, in part, as follows:

"After the appointment of Harris as trustee, Osborne continued to act as trustee and his acts in signing vouchers, etc, were accepted by the County Superintendent.

"Harris never at any time performed any act as trustee and his resignation was accepted by the County School Board, and on the County Board entered an order accepting the resignation of Harris, it entered an order stating that said common school district would have only two trustees for the year 1940-41.

"On the 5th day of June, 1940, upon the request of Hubert Osborne, the County Board entered the following order:

"It appearing to the Board of County School Trustees of Rusk County, Texas, that heretofore there have been made various orders in regard to the position of one of the trustees of the Pine Hill Common School District No. 46, of Rusk County, Texas, in that the said County Board was under the impression that a vacancy existed in the place held by Hubert Osborne as one of the trustees of said district;

"And, said board having found that the said Hubert Osborne has at all times since his election acted as trustee of said dis-

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trict, and that he has taken the oath of office required by law, and it further appearing to this board that the District Attorney of Rusk County, Texas, has certified a question to the Attorney General of the State of Texas, in regard to the status of the said Hubert Osborne as trustee of said district;

"It is therefore ordered by the County Board of School Trustees that all orders heretofore entered by the board and which now appear on the minutes of this board be set aside because of the fact that this board did now know the true status of Hubert Osborne as trustee of said district, and because of such orders as now appear on record, there would be only two trustees for said district; and it is the further order of this board that the said Hubert Osborne shall continue to serve as trustee of the said Pine Hill Common School District No. 46, until further orders of this board in the event said opinion of the Attorney General should be adverse to the claims of the said Hubert Osborne to said office."

"No appeal was made to the County Board other than the one made by Osborne as reflected by the above order. We might also note that Osborne has had his citizenship restored to him since the 13th day of May, when we submitted our original request."

Based upon the above facts you ask the following question:

Does the County Board of School Trustees of Rusk County, Texas, have the power at this time to remove Osborne as trustee of said district, or declare a vacancy in such office and appoint another to take his place?

Article 2745, Revised Civil Statutes, reads, in part, as follows:

"Art. 2745.

". . . . No person shall be trustee who cannot read and write the English language intelligibly, and who has not been a resident of such district for six months prior to his election. Providing no person shall be qualified as trustee unless he is a property taxpayer in the district

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to which he is elected and otherwise a qualies (qualified) voter in said district
Said trustees shall first take the official oath and shall, as soon as practicable, file same with the County Superintendent or County Judge. All vacancies shall be filled by the County Board of Trustees for the remainder of the term in which the vacancy occurs. . . ."

Article 2747, Revised Civil Statutes, reads as follows:

"Art. 2747.

"If a trustee so elected or appointed as herein provided, who in the opinion of the county superintendent, does not possess the qualifications prescribed by law, the county superintendent shall refuse to recognize such person who has been so elected and make written request within twenty days after such election, of the county attorney, or district attorney if there be no county attorney, to institute and prosecute with dispatch suit in the name of the State for the removal of such trustee, in the district court of the county where such trustee resides, at the option of said attorney. Upon good cause shown within the discretion of the court where such suit is pending, it shall be lawful to enjoin and restrain such person from acting as such trustee during the pendency of such suit. It shall be lawful to summon such trustee before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such. If after being so summoned, such trustee fails, neglects or refuses to obey said summons and fails to appear for the purpose of examination, and fails or refuses to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification, and because thereof the court trying such cause shall be authorized to render thereupon judgment by default against such trustee so defaulting, removing him from his said office and declaring the same vacant. The county board of education of the county where such trustee has been elected shall appoint some suitable person, who is qualified by law to act as such trustee, if during the pendency of such suit said trustee shall be enjoined from so acting. If such trustee so elected shall be so removed then such trustee so appointed shall continue to serve until

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the next regular election of school trustees for such district. The county board of education shall fill a vacancy in said office by appointing a suitable person qualified by law to act as trustee until the next regular election of school trustees for such district."

We have been unable to find any authority for the proposition that the County Board of School Trustees has the power to remove an unqualified school trustee from office. To the contrary, the method for such removal appears to be set out in Article 2747, supra. See State ex rel Nevills v. Sanderson 88 S.W. (2) 1069.

The facts show that Osborne was duly elected to the office of trustee. He has been and is now performing the duties of trustee. He has now taken the oath of office. We find no facts which would justify a determination by the County Board of School Trustees that Osborne has abandoned or vacated the office of trustee.

We conclude that the County Board of School Trustees has no authority to remove Osborne from office. We are of the opinion, further, that the Board cannot at this time declare such office vacant.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 5, 1940

By

Glenn R. Lewis

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Assistant

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FIRST ASSISTANT
ATTORNEY GENERAL

By

Lee Shoptaw

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